IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1063 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PARSOTTAM BALIRAM NIKHARE
Versus
STATE OF GUJ.

Appearance:
1. Criminal Appeal No. 1063 of 1993
MR PARDIWALA FOR MR RR MARSHALL for Appellants No. 1-2
MR HL JANI, APP, for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 01/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellants, who are brothers, were charged

with the offences punishable under Sections 452, 504 and 302 read with Section 34 of the Indian Penal Code and the learned Additional Sessions Judge, Surat, who tried them in Sessions Case No.46 of 1993, convicted them for the offences punishable under Sections 302 and 452 read with Section 34 and sentenced each of them to life imprisonment for the offence punishable under Section 302 and to pay a fine of Rs.500/- for the offence punishable under Section 452 and, in default, simple imprisonment for one month.

2. The allegation against the appellants was that both of them were next door neighbours of the complainant-Pramilaben and her husband; that they had quarrelled with them about 15 days before the incident; and that they entered the house of the deceased-Ramesh at about 6 o' clock in the evening on 26.9.1992 and appellant No.1 gave a stick blow on the head of Ramesh and appellant No.2 gave knife blows on the chest and abdomen and other parts of the body and caused the death of Ramesh.

3. The prosecution case mainly rested on the evidence of Pramilaben, wife of the deceased (P.W.1), who was the sole eye-witness. She was an illiterate lady aged about 24 years at the time of the incident. Her evidence shows that she had been married to Ramesh and they had four children. Her husband Ramesh was employed as Weaving Master. Shravan-appellant No.2 and his brother were their neighbours. She did not remember the name of Shravan's brother, but she identified him as accused No.1, who was present in the Court. Her husband used to go to work at 8 o' clock in the morning and return at about 7 o' clock in the evening. On the day of the incident, which was a 'Shradh' day, the incident occurred at about 6 o' clock in the evening. The appellants had given abuses to her husband about 15 days before the incident. On the date of incident, her husband had come back at 6 o' clock and she was in the kitchen. At that time, Shravan came through the front door and his brother-accused No.1 came through the back door. Their house has two rooms and two doors. Then Shravan gave knife blows on the chest and in the abdomen of her husband and accused No.1 gave stick blows at the back of his head. Shravan also gave a kick blow on the face of her husband. According to her, the cause of quarrel was that the children of the appellants were scolded for defecating outside their house. She had asked the appellants why they were beating her husband, but they were incensed and threatened to kill her and their children too. Then she covered the body of her

husband with a bed sheet. Since her husband had died, she went to fetch her brother. By that time, the police had already come. Then they went to the Police Station where the complaint was recorded.

4. The evidence of Dasharathbhai Shankarbhai (P.W.5), the brother of Pramilaben, shows that Pramila had come to fetch him and when they reached her residence, the police had already arrived. Thereafter, they went to the Police Station and the complaint of his sister was recorded.

5. The postmortem of the deceased was carried out by Dr. Rajiv Kantilal Mehta (P.W.2). According to him, there were six external injuries which were noted in the postmortem report. They were as follows :-

(1) 5 x 2 cm. stab would over the chest in mid line directed towards right side in the line of nipple 117 cm. above the right heel angle acute margin clean cut.

(2) 2.5 x 1.5 cm. oval shaped stab would on right lumber region 100 cm. above the heel margins clean cut angle acute.

(3) 4 x 5 cm. incised wound on the ant. side of the right elbow on the lateral aspect bone deep.

(4) 2 x .5 cm. stab wound over the upper lip opening in the mouth.

(5) Two parallel incised wound on the occipital region 2 x .5 cm. in size.

(6) 1 x 1 cm. abrasion on the rt. knee at ant. aspect.

He also found two internal injuries which were as follows:-

(1) Contusion of 2 x 2 cm. below the external injury No.5.

(2) 2 x 2 cm. contusion over middle of frontal portion of scalp.

Thus, there were five incised wounds. He said that those injuries could have been caused by the knife which was shown to him. In his opinion, the cause of death was shock haemorrhage due to stab wound to heart and he said

in his evidence that the injury to the heart, which was injury No.1, was sufficient in the ordinary course of nature to cause death. None of the other injuries was sufficient by itself to cause death.

6. It is also in evidence that the muddamal knife was discovered from the house of appellant No.2-Shravan and the F.S.L. Report shows that it was found to have been stained with blood of the same group as that of the deceased.

7. The learned advocate for the appellants submitted that the evidence of Pramilaben was not wholly reliable. He also submitted that the genesis of the incident was also doubtful. Pramilaben was subjected to lengthy cross-examination and some contradictions and omissions were brought out. But, in our opinion, they were not material and they could not destroy her main version. She was an illiterate woman and she had seen her husband being killed in her presence. She must have been stunned and scared and in her confusion, she could not have been expected to be very consistent. But reading her evidence as a whole, we see no reason to discard and disbelieve the same. It is very clear from the prosecution evidence which has been set out above that the fatal injury was caused by appellant No.2-Shravan and that the injury caused by him was sufficient in the ordinary course of nature to cause death. In the circumstances, he is bound to be convicted for the offence punishable under Section 302 of the I.P.C.

8. However, the learned advocate for the appellant submitted that though Pramilaben said that appellant No.1 had given stick blows on the head, the medical evidence does not support her version. According to the evidence of Dr. Rajiv Kantilal Mehta, there was no external injury on the head which could have been caused by stick. He said that internal injury No.2 which was a contusion over middle of frontal portion of scalp could have been caused by stick. But in cross-examination, he was not so sure and it appears doubtful whether there was any injury caused by stick blow. Hence, there is doubt as to whether appellant No.1 gave any stick blow to the deceased and, in our opinion, the benefit of doubt must go to him. There is no other active participation by appellant No.1. In the circumstances, he cannot be convicted for the offences punishable under Sections 302 and 452 read with Section 34 and his conviction for the same is liable to be set aside. We have already recorded a finding earlier that it was appellant No.2 who gave the fatal blow to the deceased and is liable to be convicted

for the offences punishable under Sections 302 and 452 of the I.P.C.

9. As a result of the above discussion, the appeal partly succeeds. The conviction of appellant No.1 under Sections 302 and 452 read with Section 34 of the I.P.C. is set aside. Appellant No.1 is ordered to be released forthwith, if not required in any other case. Appellant No.2 is convicted for the offence punishable under Section 302 of the I.P.C. for causing death of Ramesh and his conviction under Sections 302 and 452 of the I.P.C. is confirmed.

[M.C. PATEL, J.]

[A. L. DAVE, J.]

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